IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7309 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARASWATI PACHHAT VARGA SAMUDAYIK SAHAKARI FARMING SOC

Versus

COLLECTOR BANASKANTHA

Appearance:

MS KUSUM M SHAH for Petitioner No. 1

MR KS JHAVERI for Respondent No. 2

MS KATHA GAJJAR, AGP for Respondents Nos.1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioner before this Court is a Cooperative

Society duly registered as such and is engaged in cooperative farming. The members of the petitioner Society belong to the backward classes.

#. It appears that in the year 1977 or thereabout, the petitioner Society (then proposed) applied to the District Collector, Banaskantha to grant some 160-Acres of land for cooperative farming by its members. The District Collector, Banaskantha, on 13th October, 1977, issued a certificate that the land admeasuring 160-Acres of Survey No.84 of Village Juni Sendhni of Vadgam Taluka was available for such grant if the Society were registered. At that time the proposed society had produced a list of 73 members. The Talati-cum-Mantri had given a certificate that the said 73 members did not own any other land. Pursuant to the said certificate issued by the Collector, Banaskantha and the certificate issued by the concerned Talati-cum-Mantri, under order dated 6th July, 1978 made by the Deputy Collector, Palanpur, the petitioner Society was granted 160-Acres of land out of the said Survey No.84 of Village Juni Sendhni for cooperative farming, on condition, inter alia, that the petitioner Society shall get itself registered. It appears that, since then, the petitioner Society has been duly registered. The possession of the said land 160-Acres was also given over to the petitioner Society. Relevant Revenue Entry No.148 was made in the Village Form No.6 on 7th July, 1978. Corresponding entries were also made in the Village Forms Nos.7 and 12.

#. The grant made in favour of the petitioner Society was objected to by the Juni Sendhni Gram Panchayat in Appeal No.43/1978 before the Collector, Banaskantha. It was the plea of the Gram Panchayat that originally the land Survey No.84 comprising around 665-Acres of land was declared to be the reserved forest in the year 1955. However, under order dated 29th September, 1977, around 290-Acres of land of Survey No.84 was released from the reserved forest for the purposes mainly for 'gaucher' (grazing). The said land released from the reserved forest was resumed by the Collector, Banaskantha, out of which, the aforesaid grant was made to the petitioner Society. The Gram Panchayat was of the opinion that the land released from the reserved forest for a public purpose of 'gaucher' could not have been granted to private individuals for cultivation. Further, if the said grant were upheld, sufficient 'gaucher' would not be left for the villagers. The said Appeal was dismissed by the Collector, Banaskantha on 21st December, 1981. The District Collector, Banaskantha observed that, even after the grant of the said 160-Acres of land,

sufficient land was available to the villagers for 'gaucher'. The said order of the Collector, Banaskantha was set aside by the State Government under its order dated 7th February, 1983 made on Revision Application No.61/82. Under the said order dated 7th February, 1983, the matter was remanded to the District Collector, Banaskantha. After the remand, the District Collector, Banaskantha in Remand Case No.21/83, once again, under his order dated 11th August, 1983, upheld the grant made in favour of the petitioner Society. Feeling aggrieved, the Gram Panchayat preferred Revision before the State Government, which was allowed on 19th March, 1984. The matter was once again remanded to the District Collector, Banaskantha to process the same in accordance with the directions issued by the State Government. Thereafter, the District Collector, Banaskantha, in Remand Case No.1/86, under his order dated 31st March, 1989, set aside the grant made in favour of the petitioner Society. The tenor of the order suggests that the District Collector, Banaskantha was of the opinion that the said grant can not be said to have been made for the public purpose. Moreover, the grant was made on the basis of misleading information supplied by the Society and the concerned Talati-cum-Mantri. Feeling aggrieved, the petitioner preferred Revision Application No.22/1989 before the State Government, which too has been rejected on 29th June, 1990. Feeling aggrieved, the petitioner has preferred the present petition.

#. Mr.Jhaveri has contested the petition and has supported the orders made by the authorities below. He has submitted that the said orders have been made after giving adequate opportunity of hearing to the petitioner Society. It is not even the case of the petitioner Society that they have not been afforded an opportunity of hearing. Mr.Jhaveri has particularly relied upon the finding recorded to the effect that the impugned grant was made to the petitioner Society on the misleading facts supplied by the petitioner Society and the concerned Talati-cum-Mantri. He has also relied upon Paragraph 6 of the counter affidavit made by the Sarpanch of the Gram Panchayat and has disputed that the petitioner Society is in possession of the land in question.

#. It would not be out of place to mention that the fact that all the members of the petitioner Society are not engaged in agricultural operations and that some of them had, at the time of grant, lands of their own, has

been tacitly accepted by the petitioner Society. The petitioner Society before this Court agreed that the grant made in its favour may be reduced to 60-Acres and to make representation to that effect to the State Government. However, Ms.Shah candidly admits that no such representation is made by the petitioner Society.

#. The question, whether the grant of land to the landless persons belonging to the backward classes can be said to be a public purpose or not, is no more res integra. The Division Bench of this Court in the matter of BHUPATBHAI OGHADBHAI AND ORS. v. STATE OF GUJARAT AND ORS. [1996(1) GLR 600] and the Hon'ble Supreme Court in the matter of PANCHAYAT VARGA SHARMAJIVI SAMUDAIK SAHAKARI KHEDUT COOPERATIVE SOCIETY LIMITED AND ORS. v. HARIBHAI MEVABHAI AND ORS. [AIR 1996 S.C. 2578] have held that such allotment of the land is indeed a utilization for public purpose. Further, it is well accepted proposition of law that the land assigned for one public purpose can be utilized for some other public purpose. Hence, in my view, the land released from the reserved forest for the purpose of 'gaucher' could have been legitimately granted to the petitioner Society for cooperative farming.

#. In view of the above discussions, the impugned order dated 29th June, 1990 made by the State Government in Revision Application No.22/89 and order dated 31st March, 1989 made by the District Collector, Banaskantha in Remand Case No.1/86 are quashed and set aside. However, as observed hereinabove, the learned advocate Ms.Shah has admitted that all the members of the petitioner Society were not entitled to grant of land under the above referred order dated 6th July, 1978. She has further admitted that pending these proceedings, several of such members have taken up employment and have not been cultivating the land. In that view of the matter, the interest of justice demands that the order of grant made on 6th July, 1978 made by the Deputy Collector, Palanpur is reconsidered. It is, therefore, directed that the Deputy Collector, Palanpur or any other officer authorized in that behalf shall, within six months from today, reconsider the order of grant made in favour of the petitioner Society made on 6th July, 1978. Such officer shall examine the relevant facts in respect of each of the members of the said Society and determine the number of such members who could have been granted land for cultivation under the prevalent Government instructions.

#. The area of the land granted to the petitioner

Society shall be reduced keeping in view the number of members of the petitioner Society who are found to be eligible for such grant. As far as the possession of the land in question is concerned, the same is a disputed question of fact which can not be decided in this petition. It is, therefore, directed that so long as the order of grant dated 6th July, 1978 is under reconsideration by the respondent Authority, the parties to this petition shall maintain status quo as regards the possession of the land in question. Rule is made absolute to the above extent and subject to the above directions. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf